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In the Supreme Court of the United States

OCTOBER TERM, 1954

No.

J. RUPERT MASON, PETITIONER,

v.

SUMMER LAKE IRRIGATION DISTRICT, and
PUEBLO TRADING CO., RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

J. Rupert Mason prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Ninth Circuit, entered in the above case on November 10, 1954, affirming the order and decree of the United States District Court.

OPINIONS BELOW.

The opinion, order and decree by the District Court (R. 40 to 56). The decision by the Court of Appeals (Appendix, infra, pp. i, ii) is not yet reported.

JURISDICTION.

The decision of the Court of Appeals was entered November 10, 1954 (Appendix, infra, pp. i, ii). The jurisdiction of this Court is invoked under section 347 of the Judicial Code (28 U.S.C., § 1254).

QUESTIONS PRESENTED.

1. Whether 11 U.S.C.A. 401-403, the base of this petition, is a "Uniform law on the subject of bankruptcies throughout the United States".

2. Whether the seizure order affirmed by the Court of Appeals can be carried out by respondent without contravening applicable Oregon law and the vested rights of petitioner as owner of bonds federally protected by Art. I, sec. 10, cl. 1; Art. IV, sec. 2, sec. 3, cl. 2; and by the Fifth, Ninth and Tenth Amendments of the Constitution of the United States.

3. If not, is the seizure order within the constitutional power of Congress or the federal Courts?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Art. I, sec. 10, cl. 1, Art. IV and Fifth, Ninth and Tenth Amendments of U. S. Constitution; Title XLVIII, 1930 Oregon Code (secs. 48-101 et seq.); Oregon Laws 1915, c. 340, §§ 8, 11, 13-17, 25; Ore. Rev. Stats., Ch. 625, sec. 311.765, Ore. Laws 1953; 11 U.S.C.A. §§ 401-403; 11 U.S.C.A. § 35(a); Rev. St. § 3224, 26 U.S.C.A. 1543; 265 Jud. Code, 28 U.S.C.A. § 379; 43 Corp. Jur. p. 211; 44 Corp. Jur. pp. 1237, 1238.

11 U.S.C.A. § 403, the statute which is the base of this proceeding, provides in pertinent part:

Sec. 83(e),

"At the conclusion of the hearing, the judge shall make written findings of fact and his con-

clusions of law thereon and shall enter an interlocutory decree confirming the plan if satisfied that (6) the petitioner is *authorized by law to take all action necessary to be taken by it to carry out the plan.* If not so satisfied, the judge *shall* enter an order dismissing the proceeding." (Emphasis supplied.)

STATEMENT.

J. Rupert Mason seeks review of the decision of the Court of Appeals for the Ninth Circuit affirming the opinion, seizure order and decree by the District Court (R. 40 to 46). Petitioner's claims evidenced by general obligation bonds and judgment (R. 6 to 10) are not questioned. They are not *in custodia legis.* Objections to jurisdiction on Constitutional grounds were duly made (R. 14).

Summer Lake Irrigation District is a political subdivision of Oregon. The Acts of Oregon determined absolutely and conclusively the amount of the annual tax ordered to be levied upon all of the specified land in the District, and the manner it is to be apportioned. *Herrett v. Warm Springs I. D.* (Ore.), 168 Pac. 609; *Noble v. Yancey* (Ore.), 241 Pac. 338; *Kollock v. Bernard* (Ore.), 242 Pac. 847; *Enterprise I. D. v. State* (Ore.), 69 Pac. (2d) 953; *Kiesel v. Bishop,* 129 Pac. (2d) 276 (Ore.) are among the controlling decisions in the Oregon Courts. The annual assessments constitute "liens upon the real property within the District" (R. 15). In clear violation of law "No assessment has

been made (levied) for the payment of the District's bonded indebtedness since 1932" (R. 17). Respondent can not now take advantage of its own failure. *Public Market v. Portland* (Ore.), 130 Pac. (2d) 624.

Of the $319,100 bonds issued, a total of $262,900 are now owned by persons claiming to also own the tax liened land in this District (R. 19). They have filed only a "conditional" consent, as follows:

> "It is further agreed that if for any reason this contract shall not be approved by the United States District Court or upon appeal as provided above, it shall be void and of no effect and not binding upon the parties hereto" (R. 55, sec. IX).

Landed owners of bonds can avoid taxation whenever their bonds are surrendered to the District and are cancelled. Petitioner has no conflicting interests. Under like antagonistic circumstances, other Circuits have steadfastly denied Chapter IX petitions. *Kaufman County Lev. Imp. Dist. No. 4 v. Mitchell,* 116 F. (2d) 959 (CA 5), and *Town of Bellair v. Groves,* 132 F. (2d) 542 (CA 5), cert. denied 318 U.S. 769.

It is agreed that this District "Is a taxing agent and instrumentality within the State of Oregon whose indebtedness * * * is payable solely out of the proceeds of special assessments levied against or constituting liens upon real property within the District" (R. 15). Such liens for unpaid assessments are not inferior to the lien for unpaid taxes due to other political subdivisions. *In re Horsefly Irr. Dist.,* 254 Pac. 825. *Magee v. Whiteacre,* 106 Pac. (2d) 751; *Fallbrook v. Cowan,* 131 F. (2d) 513, Cert. den. 320 U.S. 735. The

liens securing these bonds are not "dischargeable" in bankruptcy.

The mandatory annual tax or assessment payable by the land holders are "claims of the State" protected by Art. IV, sec. 3, cl. 2. "And nothing in this Constitution shall be so construed as to Prejudice any Claims of * * * any particular State". *Gibson v. Chouteau,* 13 Wall. 92, 99 (1872).

While the original Chapter IX of the Bankruptcy Act made full provision for State consent, it was nevertheless held *ultra vires* the Constitutional bankruptcy power of Congress in *Ashton v. Cameron,* 298 U.S. 513 (1936). The amended Chapter IX, the base of this case, omits any provision for State consent.

This Court of Appeals did not pass upon the Constitutional requirement of "Uniformity", or the immunity of the sovereign borrowing power of a State, in its four opinions cited in the first paragraph of its instant opinion (Appendix p. i, infra). These Constitutional questions are presented here as an actual controversy for the first time in an Amended Chap. IX proceeding since the *Ashton* decision, supra.

No State law or decisions are cited in the instant decision. Only the cases of *United States v. Bekins,* 304 U.S. 27, and *J. R. Mason v. Paradise,* 326 U.S. 536, are cited. In the *Mason* case, no constitutional point was decided. In the *Bekins* case, the Court very clearly said:

> "The reservation to the States by the 10th Amendment protected and did not destroy their right to make contracts and give consents *where*

that action would not contravene the provisions of the Federal Constitution." (Emphasis supplied.)

The 1939 State consent in the instant case as applied to bonds issued in 1921 contravenes the provisions in Art. I, sec. 10; Art. IV, sec. 3, cl. 2, and the Fifth, Ninth, Tenth and Fourteenth Amendments of the United States Constitution.

There is serious conflict over "uniformity" and the compulsion allowed by Chap. IX, the Seventh Circuit Court of Appeals holding that compulsion can be invoked regardless of State law. *In re So. Beardstown Dr. Dist.* (C.A. 7), 125 Fed. (2d) 13. The District Court adopted this view in *In re Summer Lake I. D.*, 33 F. Supp. 504, in a previous petition begun by respondent and dropped. (R. 18.) The instant decision by the Court of Appeals has disregarded the controlling State law and decisions, which are *res adjudicata*. *Gelpke v. Dubuque* (1864), 1 Wall. 175.

The Fifth and Eighth Circuit Courts, contrary to the Seventh and Ninth Circuits, hold that Chap. IX allows no summary or coercive jurisdiction. *Spellings v. Dewey* (C.A. 8), 122 F. (2d) 652; *Leco v. Crummer* (C.A. 5), 128 F. (2d) 110; *Ware v. Crummer,* (C.A. 5), 128 F. (2d) 114; *Green v. City of Stuart* (C.A. 5), 135 F. (2d) 33, cert. den. 320 U.S. 769, reh. den. 320 U.S. 813; *Berry v. Root* (C.A. 5), 148 F. (2d) 945, cert. den. 326 U.S. 755; *Rittenoure v. City of Edinburgh* (C.A. 5), 159 F. (2d) 989. In this case the Fifth Circuit Court of Appeals said:

> "Chapter IX is a special extension * * * not a true bankruptcy in that the property of the debtor is not surrendered to the Courts nor are its debts discharged."

In *Spellings,* supra, the Eighth Circuit Court of Appeals said:

> "The bankruptcy court could have no greater powers than were given it by the special statute under which it was authorized to act. The right to interfere with any of the political or governmental powers of the district was expressly denied it, and, indeed, could probably not be held to exist even in the absence of the prohibition."

Consistently with this latter interpretation of Chap. IX, the Supreme Court of Michigan announced in *Clark v. City of Royal Oak,* 38 N.W. (2d) 413, cert. den. 338 U.S. 890:

> "Decree of federal court approving (Ch. IX) plan of composition * * * would not be binding as to * * * duties of Drain Commissioners under State law, the construction and interpretation of which by State Courts are binding on the Federal Courts."

The Fifth Circuit Court finally upheld the constitutional rights of one investor in municipal bonds at the end of a long protracted Chap. IX proceeding. *Wright v. City of Coral Gables* (C.A. 5), 137 F. (2d) 192, affirmed 321 U.S. 753, by 4 to 4 vote.

In *Kohl v. U. S.,* 91 U. S. 371, it was said:

> "If the United States have the power it must be complete in itself. It can neither be enlarged or

> diminished by a State. * * * The consent of a State can never be a condition precedent to its enjoyment."

In *International Shoe Co. v. Pinkus,* 278 U.S. 261, it was said:

> "The National purpose to establish uniformity necessarily excludes State regulation * * * States may not pass or enforce laws to interfere with or complement the Bankruptcy Act * * *"

In *Kalb v. Feuerstein,* 308 U.S. 433, it was said:

> "Federal bankruptcy power is, of course, paramount and supreme and may be so exercised by Congress as to exclude every competing or conflicting proceeding in state or federal tribunals."

In *Transportation Co. v. Wheeling,* 99 U.S. 273, it was said:

> "It is settled that the power to tax, and the power to regulate and prohibit taxation, are given in the Constitution by separate clauses, and that those powers are altogether separate and distinct from the power to regulate commerce."

In the government's brief by Hon. Robert H. Jackson, as Solicitor General, in the case of *U. S. v. Bekins,* 304 U.S. 27, it is said at p. 67:

> "Not only, therefore, is the choice of the taxing agency wholly voluntary, but it must necessarily be made *subject to the provisions of the State law.* Even after the taxing agency has itself invoked the bankruptcy jurisdiction, the Court is without any control over its fiscal affairs * * *"

In the oral argument, it was stated by the Solicitor General:

> "This bankruptcy act can never apply to any district unless there is a *finding* that the *law of the State* authorized it to seek that remedy *and authorized it to carry that remedy to completion.*" (Emphasis ours.)

That this argument was adopted is proven by language in the *Bekins* decision, as follows:

> "The bankruptcy power is exercised * * * only in a case where the action of the taxing agency in carrying out a plan of composition * * * is authorized by State law."

Thus federal jurisdiction of proceedings based on Chap. IX clearly depends on the will or whim of each of the States. Therefore Chap. IX is not a "Uniform law on the subject of Bankruptcies throughout the United States."

It is respectfully submitted that jurisdiction in the instant case depends entirely on the Constitution of the United States. The bankruptcy power can not be enlarged or opposed by the "consent" of a State, or by even 99% of the owners of the bonds at bar. If bankruptcy jurisdiction exists, even a little bit, it is supreme and paramount. Chap. IX although first urged as an "Emergency" with a limited life has often been amended and is now permanent, unless disallowed. It now includes county, city, school district and just about every kind of local government or authority bond issues. It is an open invitation

to tax strikes by both landed and mortgage owning interests.

Petitioner's interest in fiscal affairs is recorded in Hearings, 71st Cong., 3d Sess., House Comm. on Irr. & Recl., S. 4123, Dec. 11, 12, 1930, at pp. 14 to 36, 51, 52. Hon. Phil D. Swing, who co-authored the historic Boulder Canyon Project Act, said, at p. 14:

> "I want to say in connection with Mr. Mason that he is and has been an able and distinguished friend of reclamation and drainage projects for a good many years, assisting them in financing through the sale of bonds, and even showing his faith by investing his own money in them."

Petitioner has never doubted that the States can tax and control the private tenure of land within their dominium as responsible sovereigns, without any need for intervention or "aid" from any other tax-supported sovereign.

In support of this conviction, State sovereign power and duty in this field has been defended vigilantly, both through counsel and *in personam*, in many test cases, in both state and federal Courts. See Brief in Opposition to Motion for Rehearing by this Court in No. 859, October Term, 1935, presented by counsel Cook, Herrick, and former Governor of California, James N. Gillette, of counsel, dated September 23, 1936, filed "As counsel for J. Rupert Mason and others". The rehearing was denied, despite the large number of briefs urging rehearing, including one signed by the attorneys general of 11 States, including California. The denial of this rehearing is dis-

cussed in *Brush v. Comm.*, 300 U.S. 352 at 366-369, in constitutional respects.

In 1916 in the midst of another crisis Justice Charles Evans Hughes said:

> "But in the face of the difficulties already upon us, and destined to increase in number and gravity, we remain convinced of the necessity of autonomous local governments. An over centralized government would break down of its own weight * * * If there were centered in Washington a single source of authority from which proceeded all the governmental forces of the country—created and subject to change at its will * * * I think we should swiftly demand and set up a different system. If we did not have States we should speedily have to create them * * *." (New York State Bar Assn. Rept., Vol. XXXIX, pp. 273-274.)

But, if the States are allowed to get help from Congress in the form of "aid" through federally collected taxes, and at the same time the States are allowed to do what Art. I, sec. 10, cl. 1 so unequivocally forbids, the loopholes for feudal monopoly could easily become impossible to ever constitutionally seal up.

Congress and the States cannot both function as the sovereigns each was meant to be if Congress has power to veto loans made pursuant to the borrowing power of a State, and specified land has been charged to pay the money borrowed by a political subdivision. The Court may take judicial notice of the fact that political scientists agree that ground rent due by a

landholder as taxes, cannot be shifted to a tenant or on to anybody else. *Wealth of Nations,* Bk. 5, c. 2, Adam Smith (1776); *Principles of Political Economy,* Bk. 5, c. 2, sec. 2, John Stuart Mill (1884); *Public Finance,* p. 308, Prof. Harley L. Lutz (1925), who writes: "The conditions which determine the rental value of a piece of land are determined entirely independently of the taxes which may be imposed on the owner." *Elementary Economics,* 3d Ed., Fairchild, Furniss & Buck, p. 74, says: "A property tax on land can certainly give the owner no power to sell the land at a higher price; nor does it give him power either to exact more rent from a tenant or charge higher prices for agricultural products."

In *City of Beatrice v. Wright* (Neb.), 101 N.W. 1039, 1043, it is said:

> "To say that such property (land) cannot be sold for what it is worth in the markets, even though for a less sum than the assessments against it, is to defeat the very objects of taxation and lead to results the Constitution itself sought to avoid."

See, also:

> *Gibbons v. Hood River I. D.* (Ore.), 133 Pac. 772.

In *Willcuts v. Bunn,* 282 U.S. 216, 226, it was said by Chief Justice Hughes:

> "These obligations constitute the contract made by the State, or by its political agency pursuant to its authority, and a tax upon the amounts payable by the terms of the contract has there-

> fore been regarded as bearing directly upon the exercise of the borrowing power of the Government."

In *Monaco v. Mississippi* (1934), 292 U.S. 313, it was said:

> "Behind the words of the Constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character."

Those who think Federal power must be paramount and supreme, and that the Sovereign States should not raise their own revenues, are winning friends and influencing many people. They seem quite willing for Congress to seize and abrogate the vested property rights of owners of valid, binding and unpaid municipal bonds, yet are unwilling for Congress to tax the interest from the same bonds.

The doctrine of intergovernmental immunity was bottomed on the conviction that the sovereign power of each State to tax land values would be and must remain "independent and uncontrollable" by Acts of Congress, in "the most absolute and unqualified sense." *Federalist No. 32* by Hamilton. This sovereign State independence has been steadfastly protected for a very long time. *Pollock v. Farmers L. & T. Co.* (1895), 158 U.S. 601, 630; *Ashton v. Cameron County W. I. D. 1,* (1936), 298 U.S. 513, 530; *Brush v. Comm.,* 300 U.S. 352, 366; *Hale v. Iowa State Board,* 302 U.S. 95, 107; *Ark. Corp. v. Thompson,* 313

U.S. 132; *Guaranty Tr. Co. v. York* (1945), 326 U.S. 99; *New York v. U. S.* (1945), 326 U.S. 372.

> "* * * a law for abrogating or preventing the collection of a tax laid by the authority of the state (unless upon imports and exports) would not be the supreme law of the land, but a usurpation of power not granted by the Constitution." Federalist, No. 33.

Mr. Justice Marshall wrote:

> "No political dreamer was ever wild enough to think of breaking down the lines which separate the States and compounding the American people into one common mass." *McCulloch v. Maryland* (1819), 4 Wheat. 316, 403.

And James Bryce said:

> "America is a Commonwealth of commonwealths, a Republic of republics, a State which, while one, is nevertheless composed of other States even more essential to its existence than it is to theirs."

Petitioner respectfully submits that the bond obligations of Summer Lake Irrigation District are valid, binding and unpaid statutory contracts made by the State of Oregon in the exercise of its sovereign power to borrow money and tax specified land. The money was borrowed in 1921. The facts are not disputed.

In *Twohy v. Ochoco Irrigation District,* 108 Ore. 1, (210 Pac. 873), at page 53, on rehearing, the Supreme Court said:

> "Defendant irrigation district is declared by the statutes to be a municipal corporation; it is en-

> dowed by the statute with the governmental powers of taxation * * * its officers are public officers, charged with public duties."

That this principle of immunity and uniformity is supported by this Court is made clear in the *Ashton* case, supra, where it is said:

> "The Constitution was careful to provide that 'no State shall * * * pass any * * * law impairing the obligation of contracts' * * * Nor do we think she can accomplish the same end by granting any permission necessary to enable Congress so to do. Neither consent nor submission can enlarge the powers of Congress."

Either this Court still supports this interpretation of the Constitution, or it was reversed in some subsequent positive decision, unknown to this Petitioner. A careful reading of the opinions issued in the later case of *New York v. U.S.*, supra, leaves no doubt that this Court has adhered to the Constitution, as construed and applied in the *Ashton* case, above quoted from.

SUMMARY.

Wherefore, it is submitted that there is no constitutional authority for Congress to subject the sovereign borrowing power of a State or its political subdivisions to Federal Bankruptcy jurisdiction either alone or with State enabling legislation.

Congress can not constitutionally consent to any action by the State impairing the obligation of its own

contracts, and Congress can not enact anything except "uniform laws on the subject of bankruptcies throughout the United States." It is wholly a question of federal constitutional power, which never can be opposed by a State, because "the national purpose to establish uniformity necessarily excludes State regulation."

International Shoe Co. v. Pinkus, supra.

REASONS FOR GRANTING THE WRIT.

The seizure order affirmed by the Court of Appeals is in conflict with the decisions of other United States Courts of Appeals and the Court has decided a federal constitutional question in conflict with applicable decisions of this Court.

For the above reasons it is respectfully submitted that the writ of certiorari should be granted, the judgment and opinion of the Court below reversed, and the proceeding dismissed on the constitutional grounds shown.

Dated, San Francisco, California,
January 10, 1955.

Respectfully submitted,
J. RUPERT MASON,
Pro Se.

(Appendix Follows.)

Appendix

United States Court of Appeals
for the Ninth Circuit

J. Rupert Mason, Appellant, vs. Summer Lake Irrigation District and Pueblo Trading Co., Appellees.	No. 13,776 Nov. 10, 1954

Appeal from the District Court for the
District of Oregon.

Before Healy, Pope and Chambers, Circuit Judges.

Per Curiam.

The appellant appeals from a decree of the District Court which was entered January 23, 1953, and urges as grounds therefor points and contentions which were heard and disposed of in West Coast Life Ins. Co. v. Merced Irr. Dist., 114 F. 2d 654; Thomas v. El Dorado Irr. Dist., 126 F. 2d 922; Mason v. El Dorado Irr. Dist., 144 F. 2d 189; Mason v. Banta Carbona Irr. Dist., 149 F. 2d 49; United States v. Bekins, 304 U.S. 27; and Mason v. Paradise Irr. Dist., 326 U.S. 536. No new points or contentions are present here. The same appellant was the Mason named in three of the cases cited.

Upon the authority of these cases, the decision and judgment of the District Court is affirmed.

Indeed, the appeal is so unsubstantial and frivolous as to suggest that it was taken merely for delay. The court has seriously considered awarding damages against the appellant for the delay, as provided in Title 28, U.S.C.A. §1912. Cf. Slaker v. O'Connor, 278 U.S. 188, 191; Re Midland United Co., 3d cir., 141 F. 2d 692; Massachusetts Bonding & Insurance Co. v. Feutz, 8 cir., 182 F. 2d 752; Fern Gold Mining Co. v. Murphy, 9 cir., 7 F. 2d 613. Here the persons entitled thereto have been deprived of the $50,000 paid into court for approximately a year and a half. They have lost the use of that sum and their damages are substantial. Yet because the court has heretofore failed to apply §1912 in many cases where it might have been invoked, we have decided to hold our hand here, letting this reference to the statute serve as notice of the possibility that it may be applied in the future.

(Endorsed:) Per Curiam Opinion. Filed Nov. 10, 1954. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

J. Rupert Mason, Appellant, vs. Summer Lake Irrigation District and Pueblo Trading Co., Appellees.	No. 13,776

JUDGMENT

Appeal from the United States District Court for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the Appellees and against the Appellant.

It is further ordered and adjudged by this Court that the Appellees recover against the Appellant for their costs herein expended and have execution therefor.

(Endorsed:) Judgment. Filed and entered November 10, 1954. Paul P. O'Brien, Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 539

J. RUPERT MASON, PETITIONER,

v.

SUMMER LAKE IRRIGATION DISTRICT, and
PUEBLO TRADING CO., RESPONDENT.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion, order and decree of the District Court. (R. 40 to 46.) The affirmance by Court of Appeals (Petition, Appendix, pp. i, ii) is not yet reported.

JURISDICTION.

The jurisdiction of this Court is invoked pursuant to section 347 of Judicial Code (28 U.S.C., § 1254).

QUESTION PRESENTED.

Whether the seizure order is within the Constitutional power of Congress?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

As shown in the Petition.

STATEMENT.

Counsel for respondent having neither denied or even disputed the Constitutional or factual correctness of the instant Petition for Writ of Certiorari, this Brief will seek to more sharply focus the politico-economic issues back of the constitutional questions presented in the Petition, and their great importance, in this crucial time when so many governments are also faced with perplexing political, economic and social conflicts.

The Court may take judicial notice of the fact that Intergovernmental relations between the federal and state governments are being re-examined by the Commission on Intergovernmental Relations whose report is due very soon.

Also that Canada is engaged in a similar study of the Dominion-Provincial Relations, with no final report made. Australia has subjected the borrowing and taxing power of its states to federal control.

It is well known that the States of the Weimar Republic became mere territories, in 1934 when the Neuaufbegestz (Reconstruction Act) transferred to the Reichstag, the sovereign powers of the Weimar States.

Except for the Declaration of Independence (1 Stats. 1), the Preamble to the Constitution, and the equal rights to life and liberty guaranteed by those guardians, we would now be as fully at the mercy of those who own the earth, or who have been allowed tax favors and privileges by the legislative arms, as

were all except the aristocracy in Ancient Rome and other governments, some of which are still not unknown.

The Rise of American Civilization, by Charles and Mary Beard (1930) says, at page 294:

> "* * * the destruction of landed privilege in America by the forces unchained in the war for Independence was perhaps as great and as significant as the change wrought in the economic status of the clergy and nobility during the holocaust of the French Revolution."

Thomas Jefferson said:

> "It is too soon yet in our country to say that every man who can not find employment, but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But, it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small holders are the most precious part of a State."
>
> Thos. Jefferson, Writings, Monticello Ed. Vol. 19, p. 18.

> "It is conceded that the policy of the State is to encourage the formation of Irrigation Districts, so that the arid lands may be brought under cultivation, the welfare and comfort of its inhabitants enhanced, and the taxable value of the State enlarged. * * * The argument that unless general taxes are made superior, counties, cities and towns will perish finds little support when it is understood that the lands within an Irrigation District would afford little sustenance * * * if it were not for the benefits which the

> formation of an Irrigation District and the resultant opportunity to bring land under cultivation provide. In furtherance of this plan, the Legislature * * * has spoken, and assured those who advanced the capital to make the improvements that the land thus improved shall repay the amounts advanced * * *, and have enacted that a lien shall subsist upon said lands to insure the payment thereof. Such is the announced public policy. It is fair, equitable and just and should not be struck down by the Courts unless there is a very clear and compelling reason for so doing."
>
> *Magee v. Whiteacre,* 106 Pac. (2d) 751 (Nev.).

The Oregon Supreme Court in all cases, such as *Kiesel v. Bishop,* 129 Pac. (2d) 276 and *Noble v. Yancey,* 241 Pac. 338, fully supports this statement.

This Court has decided a long line of cases since *Von Hoffman v. Quincy,* 4 Wall. 535 (1867), re-affirming the settled constitutional principle:

> "Where a state has authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given can not be withdrawn until the contract is satisfied."

That the law in effect when the bonds were issued governs the contract, has also been steadfastly adhered to since *La. ex rel. Nelson v. St. Martin's Parish,* 111 U.S. 716 (1884). The Oregon Supreme Court likewise upholds this principle in *Kollock v. Bernard,* 242 Pac. 847, when the Oregon legislature previously "consented" to amend the same statute that governs the bonds at bar.

The Arkansas Legislature "consented" to merely extend the redemption period for tax delinquent land holders. It was allowed by the Arkansas Supreme Court, but reversed by this Court in *Wood v. Lovett,* 313 U.S. 362 to protect an owner of tax title certificates, who complained that the time extension impaired rights protected by Art. I, sec. 10.

The bonds and judgment owned by petitioner (R. 6-10) are valid, binding and unpaid obligations authorized by the State of Oregon in the exercise of its sovereign power to borrow money and to promote the equal opportunity and general welfare of all persons within its Dominium.

The obligation evidenced by the bonds at bar guarantees to each bondholder a continuing and irrepealable first, prior and paramount right and lien upon all of the land in the district, including all rents, issues and profits. *Noble v. Yancey* (Ore.), 241 Pac. 338; *In re Horsefly Irrigation District* (Ore.), 254 Pac. 825.

No Bankruptcy Act allows any interference with the liens upon land for unpaid ad-valorem taxes. They must be respected in any bankruptcy proceedings. *Fallbrook v. Cowan,* 131 F. (2d) 513 (C.A. 9), cert. den., 320 U.S. 735. *Arkansas Corp. v. Tompkins,* 313 U.S. 132.

Judicial notice may also be taken of the fact that the municipal bonds owned by petitioner, and in legal effect seized and annulled by the District Court, are constitutionally tax exempt. (38 Att. Gen. Ops. 563, 1937.) Respondent is unable to cite any statute war-

ranting the seizure order affirmed by the Court of Appeals, or authorizing respondent to carry out the order and decree of the District Court. (R. 40-46.)

Respondent does not even attempt to deny that the seizure order and decree, as applied, contravenes Art. I, Sec. 10, Cl. 1, the Fifth, Ninth, Tenth and Fourteenth Amendments of the U.S. Constitution.

> "It is important to remember that the powers of the National Government in enforcing the system of bankruptcy are purely administrative. The federal government has no proprietary interests * * * For the federal government to take over the estate of the bankrupt * * * without making full provision for the discharge of taxes owing to the State, or its subordinate municipalities would be to prefer private to public rights and would constitute a wholly unjustifiable interference with the State in matters pertaining peculiarly to its authority." *In re Kallak,* 147 Fed. 276.

It is even more important to remember that Summer Lake Irrigation District is not a taxpayer, but a State tax collector, with no more pecuniary rights or interest in or to the property or revenues of the district, than has any other Oregon tax collector.

In short, here is an Oregon tax collector seeking authority from a Federal Court to violate the specific duties which the applicable Oregon laws command him to perform.

If a State Court were to issue an order and decree restraining or in any way obstructing the collection of taxes lawfully due the Federal Government, with

or without the consent of Congress, the "interference" would be no different.

Whether the annual ad-valorem land tax commanded by law would be paid, is irrelevant. In clear violation of law, no tax has even been placed upon the land since 1932. (R. 17.) If a private promisor cannot take advantage of his own failure, it is at least equally *ultra vires* the power of the judiciary to allow tax collectors to take advantage of their own failures. For this Court has said:

> "Contracts made by a State or its local governments are to be characterized by a more scrupulous regard for justice and higher morality than belong to ordinary transactions of individuals."
> *Woodruff v. Trapnall,* 10 Howard, 190, 207.

The original Chap. IX (11 U.S.C.A. 301-304) was held *ultra vires* in *Ashton v. Cameron County,* 298 U.S. 513. Rehearing petitions and many A. C. briefs were denied. This is extensively reviewed in *Brush v. Comm.,* 300 U.S. 352 at 366 to 369. In the *Bekins* (304 U.S. 27) case, the Court did not say it reversed or overruled the principle of intergovernmental immunity, as construed and applied in a very long line of cases both before and after the Bekins decision.

In *Poindexter v. Greenhow,* 114 U.S. 270 (1885) the failure, neglect and refusal of public tax officials to obey the law, as has been admitted by respondent (R. 17) is characterized as "communism". That was the view in 1885.

This Court has also decided that a restrictive covenant is "not unconstitutional", but that no Court

may be used to enforce it. *Shelley v. Kraemer,* 334 U.S. 1. Here, the Oregon statute (Oregon Code, 1930, Title XLVIII, secs. 48-101 et seq.) is an "Unrestricted covenant" guaranteeing to all persons the equal right to own, possess and use any land in Summer Lake Irrigation District, regardless of race, color or creed. Should this fertile irrigated land be unwanted by home seekers, why do the "consenting" bond owners want it? The owners of $262,900 of the $319,100 bonds issued also claim "ownership" of the very land that has escaped taxation since 1932, in utter violation of controlling Oregon law. Petitioner's rights as a bondholder are antagonistic to the interests of the bond owning land holders. Other circuits summarily disallow Ch. IX petitions under like discriminatory circumstances. *Kaufman v. Mitchell,* 116 (Fed. (2d) 959 (C.A. 5); *Belleair v. Groves,* 132 Fed. (2d) 542 (C.A. 5), cert. denied, 318 U.S. 769. This point was raised in the District Court. (R. 57, 62.) It was not answered by the District Court or the Court of Appeals. It is again raised in the petition at page 4, and regardless of the main constitutional question presented, is a compelling reason for disallowing the proceeding, under the equitable rule also applied in *Am. Mut. Life v. Avon Park,* 309 U.S. 651.

It is settled in this republic that "The private holder of land never enjoys tax immunity as a right * * *" *Petition of S.R.A.,* 18 N.W. (2d) 442, cert. denied, 327 U.S. 558.

The effect of seizing the constitutionally protected vested property right of municipal bond owners, is to

give their savings to tax avoiding or tax evading private land holders, and in effect to compel the bond-owner to pay the taxes unlawfully escaped by the land holder, mortgagees and other remaindermen.

The theory back of every bankruptcy act, prior to Ch. IX is that the debtor come under the jurisdiction of the bankruptcy Court. Ch. IX was expressly excluded from the Chandler Amendments to the Bankruptcy Act, governing private company compositions and re-organizations. No jurisdiction over any property is authorized by Ch. IX. *Berry v. Root,* 148 Fed. (2d) 945 (C.A. 5); *Rittenoure v. Edinburg,* 159 Fed. (2d) 989 (C.A. 5), where it was decided:

> "Ch. IX is a special extension * * * not a true bankruptcy in that the property of the debtor is not surrendered to the Courts nor are its debts discharged."

Charles H. Weston, Esq., Assistant to the Attorney General of the United States issued a formal opinion addressed to Hon. H. W. Summers, chairman, House Judiciary Committee, from which opinion the following is quoted:

> "In my opinion it is beyond the power of Congress, even with State consent, to enact any bankruptcy law which is applicable to the States themselves or to political subdivisions which are merely departments or branches of the State government." (Apr. 21, 1933).

Art. I, Sec. 8, Cl. 1 empowers Congress "to establish * * * UNIFORM laws on the subject of bankruptcies throughout the United States". No

State can constitutionally "oppose" any lawful power confided to the Congress by this Article. "The national purpose to establish uniformity necessarily excludes State regulation". *Int. Shoe Co. v. Pinkus,* 278 U.S. 261. There is serious conflict among the circuits about this, as shown in the instant Petition on pages 5 to 9. This conflict is also sufficient reason for granting the instant Petition.

It is respectfully submitted that the seizure order contravenes Art. I, Sec. 10, Cl. 1; Art. IV, Sec. 3, Cl. 2, and the Fifth, Ninth, Tenth and Fourteenth Amendments of the U.S. Constitution, and that Ch. IX (11 U.S.C.A. § 401-403) the base of this proceeding, as applied by the Courts below is *ultra vires* the bankruptcy power authorized by Art. I, Sec. 8, Cl. 1.

Wherefore, the Petition presents fundamental federal Constitutional questions which the Bekins decision did not settle. In the crucial days ahead, the importance of each State meeting its land tax obligations, will be greater than ever. Such a Constitutional duty is neither "unsubstantial or frivolous". It is fundamental.

It is respectfully submitted that the Petition should be granted.

Dated, San Francisco, California,
February 1, 1955.

Respectfully submitted,
J. RUPERT MASON, *Petitioner,*
In Propria Persona.

FEB 23 1955
HAROLD B. WILLEY, Clerk

No. 539

In the Supreme Court of the United States

OCTOBER TERM, 1954

J. RUPERT MASON, PETITIONER,

v.

SUMMER LAKE IRRIGATION DISTRICT, and
PUEBLO TRADING CO., RESPONDENT.

PETITION FOR A REHEARING.

J. RUPERT MASON,
1920 Lake Street, San Francisco 21, California,
Petitioner Pro Se.

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In the Supreme Court of the United States

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No. 539

J. RUPERT MASON, PETITIONER,

v.

SUMMER LAKE IRRIGATION DISTRICT, and
PUEBLO TRADING CO., RESPONDENT.

PETITION FOR A REHEARING.

Petitioner, J. Rupert Mason, respectfully submits this petition for a rehearing on the following substantial grounds, not raised heretofore.

(1) Whether the order and decree (R. 40-46) affirmed by the Court of Appeals restrains the assessment or collection of land taxes, contrary to the controlling Oregon law, contrary to 26 U.S.C.A. 3653, and exceeds the jurisdiction authorized by Art. III, Sec. 2, cl. 2, as construed and applied in *Allen v. Regents,* 304 U.S. 439, 445-449 (1938)?

(2) Whether the order and decree is repugnant to "Equal footing" clause, as construed and applied in *U. S. v. Texas,* 339 U.S. 707, 719-720, and *U. S. v. Oregon,* 295 U.S. 1, 14, and *Coyle v. Smith,* 221 U.S. 559, 566?

(3) Whether the use and sovereign control of the specified land within Summer Lake Irrigation Dis-

trict involve national interests or national responsibilities, giving rise to paramount national duties?

Respondent, having waived his right to deny any of the Constitutional objections raised in the petition, they need not be discussed in this Rehearing Petition, which raises, for the first time the above substantial Constitutional questions, in a proceeding bottomed upon 11 U.S.C.A. Secs. 401-403.

Respondent did not even attempt to deny that the "death sentence" decree and seizure order (R. 40-46) of the valid, binding and unpaid Oregon bonds and judgment (R. 6-10) owned by petitioner, and never in *custodia legis,* contravenes Art. I, Sec. 10, cl. 1 and the 5th, 9th, 10th and 14th Amendments of the Constitution of the United States.

Respondent is no ordinary "debtor", but a mere statutory land tax collecter vested with specific taxing powers, and fixed continuing assessment and enforcement duties by the State of Oregon, in the constitutional exercise of that State's inherent, sovereign power to borrow money.

Respondent's duty, in this respect, is controlled by Ore. Laws 1917, ch. 357, sec. 27, construed and applied by the Supreme Court of Oregon in *Gibbons v. Hood River I. D.,* 133 Pac. 773; *Noble v. Yancey,* 241 Pac. 338; *Kiesel v. Bishop,* 129 Pac. (2d) 276; *Enterprise I. D. v. State,* 69 Pac. (2d) 953.

Land charged to pay such bonds, cannot escape. Laws 1919, ch. 357, sec. 37. Construed in *Medford I. D. v. Hill,* 190 Pac. 957. See, also, *Mobile v. Wat-*

son, 116 U.S. 289; *Engleman Land Co. v. Donna Irrig. Dist.* (Tex.), 209 S.W. 428; *Shapleigh v. San Angelo* (Tex.), 167 U.S. 646.

The function of levying and collecting taxes on this specified land within the dominium of a State, is an act of governing. It is "One of the highest prerogatives of State sovereignty."

The federal Courts have steadfastly recognized that they possess no inherent power to enjoin the assessment or collection of State land taxes. *Heinie v. Levee Comm.,* 19 Wall. 655, seems squarely in point.

In *Meriwether v. Garrett,* 102 U.S. 472, it was said:

> "Especially is it beyond the power of the Federal judiciary to assume the place of a State in the exercise of this (tax) authority at once so delicate and so important."

Even when the constitutionality of such a State tax has been questioned, Mr. Justice Stone said:

> "The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it."
>
> *Mathews v. Rogers,* 284 U.S. 521.

No one, except your petitioner, has asserted any federal right in the District Court, the Court of Appeals or in this Court.

A sovereign State has the duty to affirmatively exercise its power to assess and collect annual taxes on specified land, when money has been borrowed by a political subdivision pursuant to laws fixing and controlling such sovereign duty.

The case of *Transportation Co. v. Wheeling*, 99 U.S. 273, upheld a city tax on steamers engaged in interstate commerce, and in so doing said:

> "The sovereignty of a State extends to everything which exists by its own authority or is introduced by its permission, except those means which are employed by Congress to carry into execution the powers given by the people to the Federal government, whose laws, made in pursuance of the Constitution, are supreme."

In 43 *Corpus Juris*, page 211, it is said:

> "As the State may not, by any law or contract, surrender or restrict any portion of the sovereignty which it holds in sacred trust for the public weal, so a municipal corporation, as a governmental agency, can not surrender or contract away its governmental functions and powers, nor such functions as are regarded as mandatory, and any attempt to barter or surrender them is invalid."

> "The authority conferred on this court by Sec. 30 of the bankruptcy act to prescribe all necessary rules, forms, etc. . . . is plainly limited to provisions for the execution of the act itself, and does not authorize additions to its substantive provisions." *Meek v. ContuCo Banking Co.*, 268 U.S. 426.

The clearest interpretation of the very limited jurisdiction vested in the Courts by Ch. IX, the base of this cause, was made by the Fifth Circuit in the case of *Berry v. Root,* 148 F. (2d) 945, cert. denied, 326 U.S. 755. The Michigan Supreme Court, long after a Ch. IX decree had become final, decided that the approved Ch. IX plan could not be carried out. See *Clark v. City of Royal Oak,* 38 N.W. (2d) 413, cert. denied, 338 U.S. 890.

If one State could waive its sovereignty over titles to land within its dominium, it would no longer be on an "Equal footing" with other States, as required by the Constitution as construed in *Coyle v. Smith,* 221 U.S. 559, 566; *U. S. v. Oregon,* 295 U.S. 1, 14; *U. S. v. Texas,* 339 U.S. 707, 719-720.

The constitutional issues raised in the Petition and in this Rehearing petition have been adjudicated by this Court in a very long line of consistent decisions, annunciated both before and since the case of *U S. v. Bekins,* 304 U.S. 27.

Local self government and local responsibility for traditionally State and local affairs, are fast "fading away".

This is a very dangerous time to permit the States to go over the line drawn in the Constitution. It may be argued that the States will be "mercifully" dealt with by the Congress, but the inevitable effect would be to make all of our States into federal dependencies, without any revenue source which would

be "independent and uncontrollable". See, *Federalist,* Nos. 32-33, by Hamilton.

The Court may take judicial notice of the alarming growth of begging at the doorstep of Congress by States, cities, school and other local bodies, urging more and more "Federal aid".

The taxation of earned incomes and of consumers has now reached, if it has not passed, the danger level. Use of the distinctively American direct, annual ad valorem land tax has fallen far behind the use of other taxes which hamper the incentive to work, save and invest. It is recognized by political scientists that direct, ad valorem land taxes always stimulate work, savings and investment and cannot increase the general cost of producing or distributing either butter or guns. This is the tax system commanded by the Oregon law governing respondent's fixed duties. It is constitutional, and no one has even claimed it is not.

> "If there existed in the courts, state or national, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the hands of a hostile judiciary." *Cheathem v. Norvekl,* 92 U.S. 561.

In his world renowned book, *"Progress and Poverty",* Henry George has warned:

> "To turn a republican government into a despotism the basest and most brutal, it is not necessary to formally change its constitution or abandon popular elections (for) forms are nothing when

substance is gone, and the forms of popular government are those from which the substance of freedom may most easily go. Extremes meet, and a government of universal suffrage and theoretical equality may, under conditions which impel the change, most readily become a despotism. For there depotism advances in the name and with the might of the people."

REASONS WHY PETITION SHOULD BE ALLOWED.

1. To resolve the conflict with the decisions of other courts of appeal on the same matter.

2. The court of appeals for the ninth circuit decided a federal question in a way in conflict with applicable decisions of this court both before and since *U.S. v. Bekins,* 304 U.S. 27, and has so far exceeded the accepted and usual scope of justiciable affairs and judicial authority as to make this court's power of supervision of imperative public importance.

It is respectfully submitted that the constitutional importance of this petition, and the Writ of Certiorari and the supplemental brief filed February 3, 1955 be re-examined and that petition therefor should be granted.

Dated, San Francisco, California,
February 21, 1955.

J. RUPERT MASON,
Petitioner Pro Se.

CERTIFICATE OF PETITIONER.

I, J. Rupert Mason, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,
February 21, 1955.

J. RUPERT MASON,
Petitioner Pro Se.